IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 24368 of 2004

Between:

K.K.Swamy S/o.K.Bheemaiah
(E-280817), APSRTC, Wanaparthy Bus Depot Mahabubnagar District.

..... PETITIONER

AND

1 The Depot Manager, APSRTC, Wanaparthy Bus Depot, Mahabubnagar District.
2 The Divisional Manager,Senior Manager, (Operations)APSRTC Nagarkurnool,

Mahabubnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction more particularly one in the nature of writ of mandamus declaring that the action of the respondent in witholding the petitioner's annual increments for a period of two years which shall have effect on future increments as modified by the R2 herein for a period of one year instead two years is bad, arbitrary, illegal, unreasonable and violative of principles of natural justice and also against the orders of this Hon'ble Court and also apex court by setting aside the Proc.No.02/62(75)/94 WNP Dt.12.3.1995 and consequential order dt.10.10.1995 of R2 herein and consequently direct the respondents to add the withholded increments.

Counsel for the Petitioner:MR.P.VENKATESWARA RAO

Counsel for the Respondent No.: MR.Y.VINAYAKA SWAMY, STANDING COUNSEL FOR APSRTC

The Court at the stage of admission, made the following :

ORDER:

The petitioner is working as conductor in APSRTC. He was issued a charge memo dated 06.10.1994 for cash and ticket irregularities. The petitioner had submitted his explanation. The same was taken into account and the 1st respondent has passed orders dated 12.3.1995 imposing stoppage of annual increment with cumulative effect for a period of two years. The petitioner thereafter filed an appeal before the 2nd respondent who reduced the punishment to that of deferment of increment for a period of one year with cumulative effect. The petitioner challenges the same in this writ petition on the ground that though, what was imposed is a major penalty, the respondents did not hold domestic enquiry.

Heard learned counsel for the petitioner and learned standing

counsel for the respondent.

The learned counsel for the petitioner places reliance upon a judgment of Supreme Court in KULVANT SINGH GILL V.STATE OF PUNJAB as well as a decision of this court in S.K.MASTHAN v.MANAGING DIRECTOR.

The learned standing counsel Sri P.Vinayaka Swamy on the other hand submits that the writ petition cannot be maintained since it is filed 10 years after the impugned order and the same deserves to be dismissed on the ground of latches.

It is true that the writ petition is filed 10 years after the 2nd respondent has passed orders imposing penalty by reducing for one year. In the normal course of things, the writ petition deserves to be dismissed on the ground of latches. However, in the matter of rights of employees, the Supreme Court in GURUMAL SING v.PRINCIPAL, GOVERNMENT COLLEGE OF EDUCATION has held that the belated challenge of the orders detrimental to the interests of the employees should not result in total denial of relief, and at the most they can be denied back wages. Therefore, the writ petition cannot be dismissed on the ground of latches alone.

Through the impugned order the 1st respondent has imposed the penalty of stoppage of two annual increments with cumulative effect. No departmental enquiry was conducted. From a perusal of the Classiffication Control & Appeal Regulations, it is evident that the penalty of stoppage of two increments with cumulative effect cannot be treated as a minor penalty. Therefore, the same could have been imposed only after conducting enquiry. The Hon'ble Supreme Court in Kulvant Singh Gill's case (1 supra) held that major penalty cannot be imposed without conducting the departmental enquiry. In that view of the matter the impugned order cannot be sustained.

As a result of setting aside of the impugned order the matter has to be remitted back to the 2nd respondent for fresh consideration. However, having regard to the fact that the order was passed more

than a decade ago, this Court feels it just and proper to treat the punishment against the petitioner, as the one for stoppage of one increment without cumulative effect. Since, the petitioner has challenged the impugned order after 10 years, it is held that he shall not be entitled for any back wages or arrears of pay, as a consequence of the modification of the punishment. The petitioner shall however be entitled for refixation of pay with prospective effect.

The writ petition is accordingly disposed of with the above direction. No costs.

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28.12.2004

bsv

To

1 The Depot Manager, APSRTC, Wanaparthy Bus Depot, Mahabubnagar District.
2 The Divisional Manager,Senior Manager, (Operations)APSRTC Nagarkurnool,

Mahabubnagar District.

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